

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1132 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GAYATRI KRIPA CO.OP.HO.SOC. LTD.

Versus

AMAR ASHA CO.OP.HO.SOC.LTD.

Appearance:

MR YN RAVANI for Petitioners
MR JC SHETH for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/06/2000

ORAL JUDGEMENT

The petitioners are the original defendants,
against whom the respondent-Society has filed a suit,
being Regular Civil Suit No.368 of 1995, before the Civil
Judge (S.D.), Bharuch. In the aforesaid suit,
application Exhibit 5 was given for interim injunction,

restraining the defendants from obstructing the right of way of the plaintiff from passing and re-passing through the disputed strip of land.

The trial court, after considering the evidence on record and after hearing the detailed arguments of both the sides, rejected the application at Exhibit 5 by the order dated 23rd January, 1996. It was found that the plaintiff has no prima facie case especially when the plaintiff could not prove even prima facie that they have no alternative way except the described road. The aforesaid order of the trial court was challenged by the original plaintiff by way of appeal under Order 43 of C.P.C., being Civil Miscellaneous Appeal No.28 of 1996. The aforesaid appeal was heard by the learned Extra Assistant Judge, Bharuch, who, by the order dated 3.7.1996, set aside the order passed by the trial court below Exhibit 5 and allowed the application Exhibit 5 given by the plaintiff in the said suit. The effect of the same is that the defendant-Society is restrained during the pendency of the suit from making any obstruction in the suit way till the disposal of the suit. The aforesaid order is challenged by the original defendants in the present revision application.

At the time of hearing of this C.R.A., it was pointed out by Mr.Ravani, learned Advocate for the petitioners, that the appellate court has not considered the important point that there was already alternative way in favour of the members of the plaintiff-Society and in that view of the matter, there was no question of considering the question of easement of necessity in favour of the plaintiff. It was also pointed out that looking to the documentary evidence, it should have been inferred that the plaintiff has neither prima facie case nor balance of convenience and, therefore, the appellate Judge should not have interfered with the discretionary order passed by the trial court, especially when the appellate court was deciding Miscellaneous Appeal and even if one view was possible, it was not open for the learned appellate Judge to interfere with the aforesaid order of the trial court while deciding the application Exhibit 5.

Mr.Ravani has relied upon a judgment of this Court in Jayantilal Hansraj Shah and others v. Hemkunverben Dolatrai Dave and others, XXXVII (3) GLR 522. This Court, while deciding revision application, came to the conclusion under Section 50 of the Gujarat Cooperative Societies Act, 1961 that an Agreement between

the legal entity or a person and a non-existent cooperative Society is a nullity and such an agreement cannot be specifically enforced. Person claiming under it have no interest, which would enable them to seek permission to file an appeal against the concerned decree. The aforesaid judgment is cited to substantiate his say that the document, on which the plaintiff has placed reliance, is a Society's letterhead, which was of a non-existent cooperative Society and, therefore, the aforesaid document has no value in the eye of law and no reliance could have been placed by the appellate court. Mr.Ravani submitted that the appellate court has committed error of law, which has ultimately affected the jurisdiction of the appellate court in coming to the correct decision on the facts of the case.

Mr.Ravani has also relied on Ramji Mandir Narsinhji and others v. Narsinh Nagar alias Tekri Cooperative Housing Society Limited and others, XX GLR 801. A Division Bench of this Court, while deciding a First Appeal, has taken a view that contract between non-existent cooperative Society and the other party is a nullity and similarly, the proposal of the cooperative society, purporting to act on behalf of the non-existent society is also a nullity and no cause of action can be said to be available in favour of such society and, therefore, such agreement cannot be enforced in court.

Mr.J.C. Sheth, appearing for the original plaintiff, has submitted that since considerable time interim injunction is operating in his favour and at present, the plaintiff-Society and its members are using the disputed strip of land, and that even if the appellate court has committed an error of law, it would not be sufficient for this Court to interfere in revision application under Section 115 of the C.P.C. Mr.Sheth relied upon the judgment in Hindustan Aeronautics v. Ajit Prasad, AIR 1973 SC 76, wherein the Honourable Supreme Court has said that even if an order is in accordance with law or not, unless it is shown that the appellate court has no jurisdiction to decide the controversy, Section 115 of the C.P.C. is not attracted. Though prima facie, Mr.Ravani is right that the appellate court, in the facts and circumstances of the case, should not have interfered with the order passed by the trial court, however, as the injunction application is in force since considerable time, and it will not be proper for this revisional court to examine documentary evidence on record while exercising powers under Section 115 of the C.P.C. Even if the order in question is contrary to law, then also, it will not be open for this Court to set

aside the order of the appellate court, especially when it cannot be said that the order in question is without jurisdiction. Even if there is an error of law, then also, it is not open for this Court to set aside the said order while exercising revisional jurisdiction under Section 115 of C.P.C. Under the aforesaid circumstances, and especially when the interim injunction is in operation since July, 1996, this revision application is not required to be entertained and it will suffice if proper direction for disposal of the suit is given. Under the circumstances, the order of the appellate court is not required to be interfered with by this Court in this revision application. However, the Civil Judge (S.D.), Bharuch is directed to decide Regular Civil Suit No.368 of 1995 at the earliest and, in any case, not later than 31st October, 2000. The aforesaid direction for disposal of the suit is given considering the submission of Mr.Ravani that the members of the defendant-Society is suffering considerable difficulty because of the interim injunction, as every day, because of the interim injunction and because of the interim order, members of the plaintiff-Society are passing and re-passing through the property of the defendant-Society, which, according to Mr.Ravani, causes great inconvenience to the members of the defendant-Society. It is clarified that while deciding the suit, the observations made by the appellate court while deciding Miscellaneous Appeal may not be taken into consideration and the suit may be decided strictly as per the evidence which might be led by the parties and in accordance with law. Both the Advocates have assured the Court that the plaintiffs and the defendants as well as their Advocates will cooperate in expeditious hearing of the suit so that the suit can be disposed of as per the time-bound schedule and that no unnecessary adjournment will be taken and all attempts will be made to see that the witnesses are kept present.

With these observations, this C.R.A. is disposed of. Rule is discharged with no order as to costs.

The trial court may send compliance report regarding the disposal of the aforesaid suit to this Court.

The petitioners are given direct service of the writ of this judgment so that the same can be produced before the trial court for the purpose of taking the suit for hearing.

(apj)